

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 8, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF: 08KD-098
Kauai

Consent to Assign Grant of Non-Exclusive Easement S-5719, William A. Lydgate, Assignor, to The Association of Apartment Owners of Dry Gulch Flats, Assignee and Amend Grant of Non-Exclusive Easement S-5719, Kapaa and Waipouli, Kauai, Tax Map Key: (4) 4-4-4: Portion 28.

APPLICANT:

William A. Lydgate, as Assignor, to The Association of Apartment Owners of Dry Gulch Flats, a domestic nonprofit corporation, whose business and mailing address is P.O. Box 223755, Princeville, Hawaii, 96722, as Assignee.

LEGAL REFERENCE:

Section 171-36(a)(5), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kawaihau, situated at Kapaa Homesteads, 2nd Series, Kapaa & Waipouli, Kawaihau, Kauai, Hawaii, identified by Tax Map Key: (4) 4-4-4: Portion 28, as shown on the attached map labeled Exhibit A.

AREA:

722 Square feet, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

TERM OF LEASE:

55 years, commencing on March 1, 2005 and expiring on February 28, 2060. Rental reopening is not applicable.

ANNUAL RENTAL:

\$750.00, one-time payment.

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

DCCA VERIFICATION:

ASSIGNOR:

Place of business registration confirmed:	n/a
Registered business name confirmed:	n/a
Good standing confirmed:	n/a

Not applicable, assignor is an individual.

ASSIGNEE:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Good standing confirmed:	YES

REMARKS:

The Board at its September 26, 2003 under Item D-5 approved as amended the Granting of a term non-exclusive easement for access and utility purposes to Mr. William A. Lydgate over lateral ditch No. 7. Grant of Non-Exclusive Easement S-5719 was entered into on March 14, 2005. The term of the easement was for fifty-five (55) years, commencing on the March 1, 2005 and expiring on February 28 2060. A one-time payment of \$750.00 was paid.

Mr. Lydgate owns Parcel 28 which is approximately 33 acres in size. Meandering through this parcel in an east-west orientation is lateral ditch 7, which is a combination of underground irrigation tunnels and open ditches. This irrigation system is encumbered by Revocable Permit No. S-7310 to the East Kauai Water Users Cooperative. An access and utility easement was necessary over a portion of this system in order to access the rear of Mr.

Lydgate's property.

The Association of Apartment Owners of Dry Gulch Flats has purchased Lot 1 identified as Parcel 28 of Tax Map Key: (4) 4-4-4 from Mr. Lydgate. Grant of Non-Exclusive Easement S-5719 will be part of the Common Element for access and utility for their condominium property region (CPR).

The Assignee has taken out liability insurance coverage for the period December 5, 2007 to December 5, 2008.

Assignee has not had a lease, permit, easement or other dispositions of State lands terminated within the last five years due to non-compliance with such terms and conditions.

No agency or community comments were solicited. Assignee understands they are required to comply with all of the terms and conditions of the easement.

Staff reviewed the grant of easement document. The document was issued in 2005. Term easements now issued by the State contain a "run with the land" provision. All that is required is the grantee has to inform his successor of our liability insurance requirement when the easement is sold. This eliminates needless paperwork and time by the Board, staff, Attorney General's office, grantee, private attorneys, escrow companies, etc. Thus, amending the term easement document is recommended.

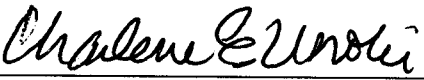
RECOMMENDATION: That the Board

- A. Consent to the assignment of Grant of Non-Exclusive Easement S-5719 from William A. Lydgate, as Assignor, to The Association of Apartment Owners of Dry Gulch Flats, as Assignee, subject to the following:
 - 1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
 - 2. Review and approval by the Department of the Attorney General; and
 - 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- B. Amend Grant of Non-Exclusive Easement S-5719 to include the following condition:
 - 1. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (4) 4-4-4:28, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned,

conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;

2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



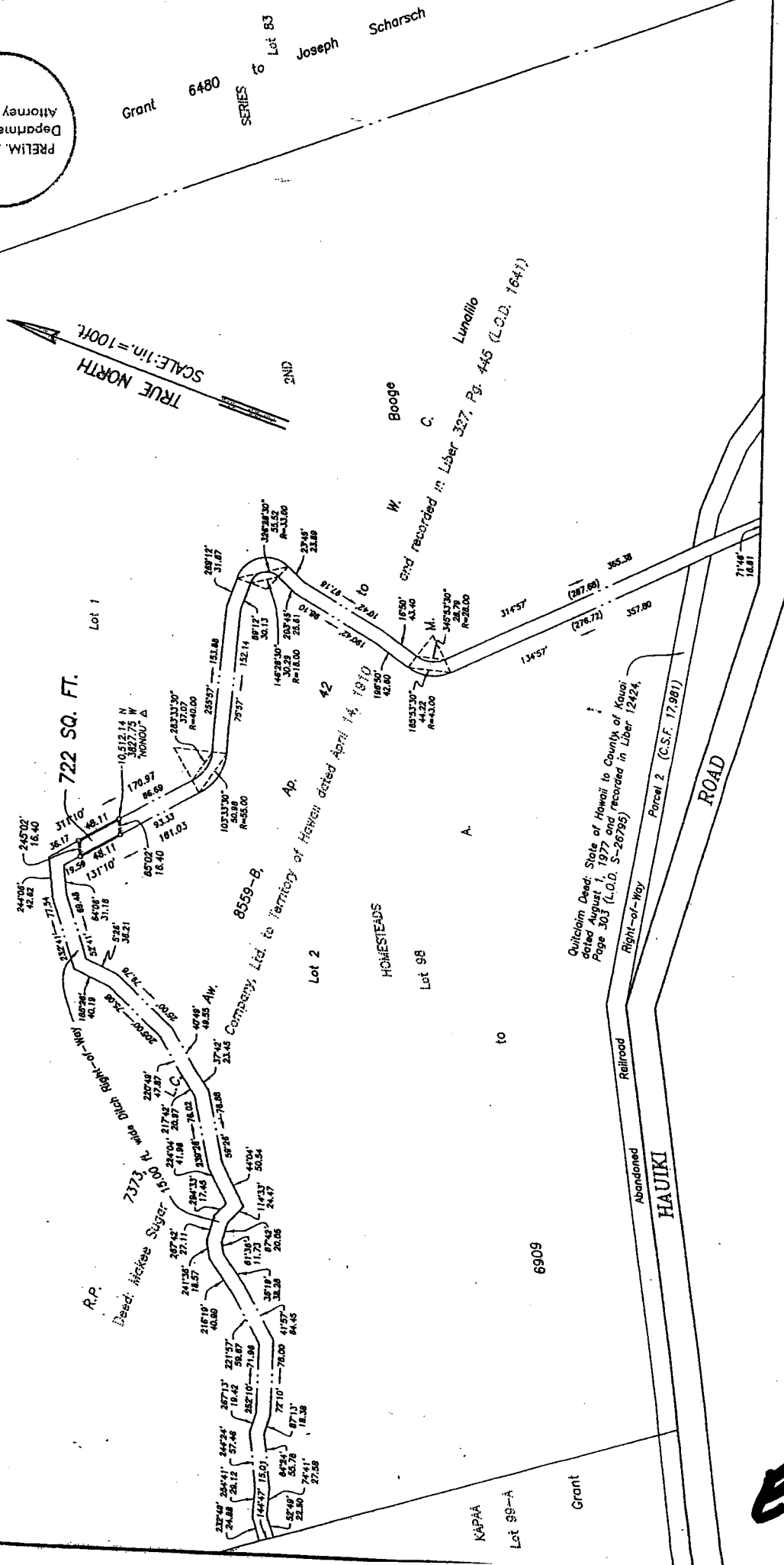
for Marvin Mikasa
Kauai Land Agent

APPROVED FOR SUBMITTAL:



for Laura H. Thielen, Chairperson 

PRELIM. APP'D.
Department of the
Attorney General



REDUCED NOT TO SCALE

NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT

Waipouli, Kawaihau, Kauai, Hawaii

JOB K-35(04)

C. BK.

Scale: 1 inch = 100 feet

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

TAX MAP 4-4-4: Per. 28

C.S.F. NO. 23,732

JGL March 28, 2004

Exhibit 'A'